



Senate Judiciary Committee
May 24, 2016

Medical Parole Bills
HB 5078, 5079, 5081

The problem of aging prisoners is not unique to Michigan. A growing number of national and state reports describe how the “tough on crime” policies of the last several decades have filled prisons with people who are extremely low risk but costly to keep as they develop the health problems we all face as we age. However, Michigan has an especially large and ever-increasing number of older prisoners because we impose a lot of very lengthy sentences and have an exceptionally long average length of stay. In 2013, nearly 8,500 prisoners – 19 percent of the population – were age 50 or older; nearly 1,200 were 65 or older. This proportion will inevitably continue to grow, as will spending on their medical care.

Aging prisoners are not, of course, the only ones with serious medical problems. Anyone, regardless of their age, their offense or the length of their sentence can develop cancer or heart disease or other debilitating illnesses that require extensive and expensive treatment.

In the past, the parole board had the authority to grant medical paroles to people who were physically or mentally incapacitated. The enactment of “truth in sentencing” legislation that requires every person to serve every day of his or her minimum sentence in a secure facility ended the practice. As a result, the only route to release was through the long and politically difficult process of commutation.

CAPPS has long advocated the re-enactment of medical paroles. We are grateful to Reps. Pscholka and Pagel for taking the lead in restoring the ability of the board to do what is safe, compassionate and cost-effective on a case-by-case basis. And we are grateful to Sen. Jones for taking the bills up so promptly. HB 5078 and 5079 establish an excellent process:

- They define “medically fragile” in a realistic way that allows the board to address various disabilities while keeping the potential threat to society as the core consideration.
- They provide for appropriate involvement by prosecutors and victims.
- They do not require public hearings so that people who are infirm, in pain or incapable of remembering what they’ve done can be questioned about their crimes.
- They define “medical facility” with sufficient flexibility to allow for the placement that is most suitable for the individual parolee.
- They ensure that people remain under supervision until they reach what would have been their earliest parole date for the sentence they are serving.
- They require that people who have been released continue to meet the criteria for a medical parole unless they have otherwise become eligible for parole.

- They protect the safety of vulnerable, medically fragile parolees by requiring the board to monitor their condition and by requiring any medical facility used by the Department to ensure the safety of its residents.

We recognize that a driving factor behind the bills is the desire to save medical costs in the corrections budget by transferring prisoners to settings where they can draw on various health care benefits, public and private. In fact, the costs go beyond those that are directly related to delivering health care. To the extent that prisoners are transported offsite to receive specialized care, there is substantial expense for transportation and security. And beyond that there are the routine security costs of operating a prison. Even a few hundred beds make a difference, independent of extraordinary medical costs. The MDOC estimates that every 160 beds eliminated permit the closing of a housing unit at a cost savings of \$2,628,000.

But cost-savings are not the only reason to enact these bills. Our prisons are not designed to be nursing homes. It is difficult for medically fragile prisoners to get to chow, to keep a job and to protect themselves from being taken advantage of by younger prisoners who may be manipulative or aggressive towards them. It is hard to follow orders if you can't walk fast enough or hear well enough or toilet quickly enough to comply. More and more the Department has to make accommodations for people who can't reach a top bunk or dress without assistance or breathe without oxygen. And certainly our prisons were not intended to house those who are suffering from such severe dementia that they do not even know they are being punished or why.

Whether we believe the purpose of prison is punishment or crime prevention, we gain nothing from locking up people who are long past doing any harm to anyone else. We lose nothing by allowing people to spend their last years or months in facilities where they can have their medical needs met and maybe even see their families a little more. These bills allow us to apply common sense and avoid incarceration that is both pointless and cruel.

While we strongly support HB 5078 and 5079, we cannot support HB 5081. That bill would make it a one-year misdemeanor for someone to aid a parolee in leaving or attempting to leave a medical facility or to have contact with a person when that contact is prohibited by a parole condition or personal protection order. Although HB 5081 has been substantially improved since it was first introduced, we still have concerns about creating this new crime.

Our primary concern is that the bill criminalizes aiding and abetting conduct by the parolee that is not in itself criminal. Take, for instance, the standard prohibition on associating with a felon. Grandpa is a medical parolee in a nursing home. Grandson goes to visit and brings along a cousin who has a felony conviction. Grandpa is now in violation of a parole condition. He has not committed a new crime, his level of risk to the public has not changed and the board would probably never revoke his parole for that violation. But Grandson has now committed a crime that carries up to a year in jail. What exactly is achieved by criminalizing the behavior of someone who helps someone violate a non-criminal administrative rule?

It is the parolee's responsibility to abide by the conditions of his or her parole. HB 5078 makes it clear that violating the conditions of a medical parole will result in a return to prison. That consequence should provide both parolees and their loved ones with sufficient incentive to ensure compliance.

A great deal of thought and care has gone into this package. The sponsors have all been exceptionally open to input from a wide range of stakeholders. Enacting these bills will put Michigan at the forefront of those states who are confronting the problem of housing and caring for aging and other medically frail prisoners. We urge you to take that step.